Rosewood Mfg. Co., Inc. *and* **Amalgamated Clothing and Textile Workers, Union, AFL–CIO, Petitioner.** Case 26–RC–6469

August 16, 1982

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election held on December 18, 1981, and the Regional Director's report recommending disposition of same.[1] The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Regional Director's findings and recommendations.

Our dissenting colleague finds that the Employer's campaign in the instant case was fully protected by Section 8(c) of the Act. However, he neglects to note that for over three decades the Board has maintained that Section 8(c) was intended by Congress to apply only to unfair labor practice cases and not representation proceedings. *General Shoe Corporation*, 77 NLRB 124 (1948). See also *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962). In light of this longstanding precedent, we see no reason why it should be changed at this time. See also *Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc.*, 259 NLRB 483, fn. 2 (1981).

In evaluating preelection conduct in a representation proceeding, it must be determined whether, under all the circumstances, the conduct in question "destroyed the laboratory conditions in which the Board must hold its elections and prevented the employees' expression of a free choice in the election." *Dal-Tex Optical Company, Inc., supra* at 1787. See also *Liquid Transporters, Inc.*, 257 NLRB 345 (1981), and *Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc.*, 249 NLRB 144 (1980). In the instant case, we agree with the Regional Director's determination that the Employer's emphasis on linking the selection of the union with unprofitability, low productivity, subsequent plant closure, and loss of jobs was coercive, thereby destroying the laboratory conditions and preventing the employees from expressing a free choice in the election. Under these circumstances, we agree with the Regional Director's recommendation that the election be set aside and a second election be held.

[Direction of Second Election omitted from publication.][2]

CHAIRMAN VAN DE WATER, dissenting:

I have carefully examined the leaflets and letters distributed by the Employer during the critical period, as well as the text of the speech delivered to employees by Charles Blauer, the Employer's president. I do not find that his material constitutes threats to close the plant if it was unionized, nor threats to employees that it would be futile to vote for unionization. Rather, in my view, the Employer's campaign was fully protected by Section 8(c) of the Act, and simply provided the employees with a different perspective regarding the merits of unionization.[3] Accordingly, I would overrule Objections 1 and 3, contrary to the recommendation of the Regional Director, and would remand the case for hearing on Objections 4, 5, 6, 7, 8, and 9.

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 39 for, and 53 against, the Petitioner; there was 1 challenged ballot, which was insufficient to affect the results.

[2] [*Excelsior* footnote omitted from publication.]

[3] Contrary to my colleagues, I do not decide that certain statements protected by Sec. 8(c) of the Act may not nonetheless be objectionable. What I find here is that the material in question does not constitute threats and, as such, happens to be protected by Sec. 8(c) as well as being unobjectionable.